

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of Telecommunications
and Energy on its own Motion to Implement the
Requirements of the Federal Communications Commission's
Triennial Review Order Regarding Switching for
Large Business Customers Served by High-Capacity
Loops

D.T.E. 03-59

**COMMENTS
of
THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

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September 16, 2003

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I. INTRODUCTION

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and All Other Federal Executive Agencies (referred to herein as ("DOD/FEA")) hereby submits its Comments in the above-captioned proceeding. The accompanying letter describes the interests of DOD/FEA in this proceeding. DOD/FEA recommends that the Department of Telecommunications and Energy ("Department") adopt the procedures set forth below to conduct the inquiry concerning customers served by high-capacity lines mandated by the Federal Communications Commission ("FCC") in its *Triennial Review Order*.¹

¹ Review of the Section 251 Unbundling Obligations of Local Exchange Carriers, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36 (released Aug. 21, 2003) ("*Triennial Review Order*").

II. BACKGROUND

The Department instituted this proceeding on August 26, 2003 to address requirements in the *Triennial Review Order* concerning the unbundled network element ("UNE") local switching for large business customers served by high-capacity access facilities. Among other provisions in the FCC's order, state regulatory agencies have 90 days from its effective date, October 2, 2003, to conduct a proceeding to allow rebuttal of the presumption that local switching should no longer be required as a UNE for large business customers served by high-capacity loops, such as DS-1.

There are many federal offices and military installations throughout Massachusetts, so that DOD/FEA is one of the largest consumers of telecommunications services in the state. End users such as DOD/FEA do not acquire unbundled network elements ("UNEs") from incumbent local exchange carriers ("LECs"). However, as described in the accompanying letter, DOD/FEA has a vital consumer interest in these proceedings. In addition to these Comments and the letter, DOD/FEA is submitting Comments in D.T.E. 03-60 concerning the availability of the local switching UNE for "Mass Market" customers.

III. DOD/FEA RECOMMENDATIONS FOR PROCEEDINGS

In the Notice initiating this inquiry, the Department states that if no competitive LEC files a written request to investigate the matter, the Department will determine whether to adopt the FCC's findings concerning access to the switching UNE for customers served by high-capacity loops without undertaking additional procedures. DoD/FEA urges the Department to be cautious in reaching a finding that this UNE is not necessary for DS-1 access customers throughout the Commonwealth. The *Triennial Review Order* states that "geographically specific analysis could possibly demonstrate that competitive carriers are impaired without access to unbundled incumbent LEC

local switching for DS-1 enterprise customers in a particular market.”² From DOD/FEA’s perspective as an end user, a market-specific analysis is definitely required.

In these Comments, DOD/FEA will not address the merits of UNE issues, but will address the scope, nature and timing of the inquiry as directed in the Department’s Notice. To reach consistent findings within the time limitations set by the FCC, DOD/FEA recommends that the Department employ generic proceedings addressing all competitive LECs and all parts of the Commonwealth. While generic proceedings are employed, the Department should be prepared to make individualized determinations for different carriers or classifications of carriers in different markets or parts of the state.

Because of the procedural deadlines established by the FCC and the scope of the issues to be addressed, strict adherence to case deadlines established by the Department and effective use of pre-trial discovery will be critical. For an efficient process with a minimum of duplication, DoD/FEA recommends that all parties to whom requests are directed also furnish copies of all responses to all other parties who ask for these responses on a “me too” basis.

DOD/FEA recommends that the 90-day proceeding be conducted as a “paper proceeding” without evidentiary hearings. To ensure a full record, however, DOD/FEA recommends that parties be permitted to submit verified statements or affidavits of experts. DOD/FEA proposes the following schedule, with days measured from the start of the 90-day period:

<u>Day</u>	<u>Activity</u>
14	Deadline for responses to data requests
28	Initial comments

² *Id.*, para. 454.

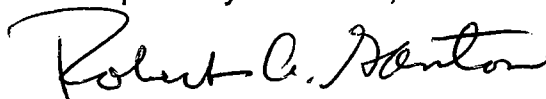
49	Reply comments
63	Rebuttal comments
90	Final order by Department

In addition to the procedural schedule above, DOD/FEA suggests that there be at least one opportunity for an all-party meeting before the Department. While this is a demanding schedule, DOD/FEA believes that this schedule should allow for development of a complete record.

IV. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Department to adopt the recommendations set forth in these Comments.

Respectfully submitted,



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